IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1102 OF 2006

Janardhan @Balu Mukund Mhatre ... Applicant.

vs.

The State of Maharashtra. ...Respondent

Mr.N.N.Gawankar with Arfan Sait, for Applicant.

Mr.Y.S.Shinde, A.P.P. for the State-Respondent.

Mr.V.V.Purwant, for Original Complainant.

CORAM: V.M.KANADE,J.

DATED: 31st March,, 2006

P.C.:-

1. Heard the learned Counsel appearing for applicant and A.P.P. for the State. The applicant was arrested in connection with the offence punishable under Sections 120-B, 302 of I.P.C. read with Sections 3 and 25 of the Arms Act in a C.R. registered with Vishnunagar Police Station. The incident took place on 13.4.2005, but the applicant was arrested on 2.5.2005. It is alleged that the applicant who was a partner and Cousin of the deceased, had given a contract to kill the deceased, and accordingly, his cousin was murdered on the same day.

The learned Counsel appearing for the applicant submitted that the only evidence against the present applicant is in the form of Statement of Mr.Vivek Khamkar which was recorded on 1.6.2006, which was almost after one and half month after the incident had taken place. It is submitted that in the said statement Mr.Vivek Khamkar has stated that the present applicant had inquired with the said Mr.Khamkar as to whether he would take the contract to kill his Cousin. This incident, according to him, had taken place in the year 2003. The learned Counsel for the applicant submits that this Court in this case has released one of the co-accused namely Deepak Pavshe in Criminal Application no.296 of 2006 and has held that it is difficult to rely on the said statement. The other evidence against the present applicant is in the form of statements of two other witnesses viz. (i) Anil Shinde and (ii) Dropadi Mhatre who have deposed that there was enmity between two brothers and there was dispute over the accounts and the applicant became angry when the deceased demanded accounts from time to time. Apart from these statements, there is no other evidence. The learned Counsel appearing for complainant stated that the applicant was present on the scene of offence when the said incident took place. The learned A.P.P. relying on the statement of Vivek Khamkar has submitted that at this stage the said statement is sufficient to show the involvement of the present applicant and so also, the statements of other two witnesses show the motive of the present

applicant to eliminate the deceased.

2. After having given my anxious consideration to the submission made by the learned Counsel appearing for the either side, in my view the applicant is entitled to release on bail. The case of the applicant is more or less similar to the case of Deepak Pavshe. The evidence against both of them also is essentially based on the statement of Vivek Khamkar. Another thing which has to be taken into consideration is that initially the complaint had been filed against Mr.Pujari alleging that he has demanded various amount from the deceased. The deceased and the applicant were carrying on the business of selling country liquor and they were also in the construction business. Taking into consideration all these facts and circumstances, in my view the applicant is entitled to be released on bail subject to certain stringent condition to be imposed.

3. The applicant be released on bail in the sum of Rs.5,000/- with one or two sureties in the like amount.

4. The applicant shall not enter Dombivali and Kalyan City during the pendency of the Criminal trial.

5. He shall give his new address to the Jail Superintendent and shall report to the nearest Police Station from his new residence.

6. He shall not threaten any witness and if any complaint is received by the Investigating Officer, the Public Prosecutor may file an application for cancellation of bail.

7. The applicant shall report to the concerned police station twice in a month.

The application is disposed of.

(V.M.Kanade, J.)